

Office Action Summary

Application No.

10/759,738

Applicant(s)

WRAY ET AL

Examiner

KIDEST BAHITA

Art Unit

2123

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/21/08
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date 10/30/08
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Arguments

1. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues that the limitations of claims 1, 14 and 21 have not been address on the office action sent 6/4/08 rejection. Examiner make a new clear and complete rejection of art and a new ground of rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. For the above reason, the Final rejection sent 6/4/08 has been withdrawn.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 14 and 21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The Federal Circuit has recently applied the practical application test in determining whether the claimed subject matter is statutory under 35 U.S.C. § 101. The practical application test requires that a "useful, concrete, and tangible result" be accomplished. An "abstract idea" when practically applied is eligible for a patent. As a consequence, an invention, which is eligible for patenting under 35 U.S.C. § 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The test for practical application is thus to determine whether the claimed invention produces a "useful, concrete and tangible result".

The current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for system and computer readable medium claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result.

Specifically, the claimed subject matter does not produce a tangible result because the claimed subject matter fails to produce a result that is limited to having a real world value. More specifically, the claimed subject matter is software or program code.

Claims 2-13, 15-20 and 22-32 fail to remedy to the lack of hardware support hence are also rejected for not be categorized beyond an abstract level such as to yield statutory result required for a Practical Application.

Claim Rejections - 35 USC § 101

Claims 14-20 provides for the use of computer executable, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 14-20 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under

35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trugman (US 5,887,141) in view of Pazandak et al. (US 7,027,975).

Regarding claim 1, Trugman discloses that A computer-readable medium having computer-executable instruction that enable remote execution of a command, the instructions comprising: receiving a command line instruction including a remote command, the remote command identifying a task of execution to be performed on a remote system (column 4, line 60 – column 5, line 15); initiating a session with at least two remote systems (column 5, lines 6-15; column 6, lines 41-44); and causing the remote command to be executed concurrently on each of the at least two remote systems, including issuing the remote command to the environment variable (column 6, lines 19-33).

Trugman fails to disclose that assigning each session to an environment variable configured such that a plurality of commands can concurrently use the session by referring to the environment variable.

Pazandak discloses assigning each session to an environment variable configured such that a plurality of commands can concurrently use the session by referring to the environment variable (column 5, lines 1-25 i.e., This distribution enables predictive parsing, as well as translation and execution concurrently and in real time, supporting pluralities of user to simultaneously specify pluralities of queries or commands interfaced to pluralities of devices and applications, including over a network or other distributed computing environment. The embodiments are operable, for example, on the Internet and World Wide Web network. Additionally, embodiments are operable in local area networks and even on a single computer or device.

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to modify the teachings of Trugman with the teachings of Pazandak for use effective in present computing environments, in which scalability, multi-user capability, wide area and remote geographic networking, and reduced or "thin client" hardware and software is desired.

Regarding claims 2-10, Trugman discloses as follow,

2. The computer-readable medium recited in claim 1 wherein the session comprises a connection between a systems on which the command line instruction is received (Fig. 2).
3. The computer-readable medium recited in claim 1, wherein the session is

initiated as a persistent session that is available to perform subsequent remote commands (column 5, lines 36-55).

4. The computer-readable medium recited in claim 3, further comprising receiving a second command line instruction including a second remote command and causing the second remote command to be executed using the persistent session (column 5, lines 27-35).

5. The computer-readable medium recited in claim 1, wherein the remote system comprises a remote agent configured to return information to the local system wherein the information comprises at least one of a result of the execution, meta information, and information about the remote system from which the result originated (Fig. 2, element 116a-e; Fig. 2).

6. The computer-readable medium recited in claim 1, wherein the remote system comprises an alternate process (column 6, lines 19-32; column 7, lines 12-18).

7. The computer-readable medium recited in claim 1, wherein the remote system comprises an alternate application domain located on a local computing system (column 7, lines 12-18; column 5, lines 37-42)).

8. The computer-readable medium recited in claim 1, wherein causing the remote command to be executed comprises delegating the step of causing the remote command to be executed to a controller associated with a subset of the at least two remote systems (column 4, lines 37-51).

9. The computer-readable medium recited in claim 8, wherein each of the at least two remote systems comprises a node in a hierarchical network topology and the controller holds a position in the hierarchy between the subset of the at least two remote systems and the system receiving the command line instruction (Fig. 1, Fig. 2; Abstract, column 2, lines 51-60).

10. The computer-readable medium recited in claim 1, wherein the remote command is concurrently executed on each of the at least two remote systems (column 6, lines 41-61).

4. Claims 11-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over in Trugman (US 5,887,141) in view of Levin et al. (US 2003/0177187) further in view of Pazandak et al. (US 7,027,975).

Regarding claims 11-13, Trugman and Pazandak disclose the limitations of claim 1, as stated in Par. 1, but fails to disclose the limitations of claims 11-13. However, Levin

discloses aggregating results of executing each remote command (Fig. 7); the results are aggregated into an array (Fig. 9 and 10).

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to modify the teachings of Trugman with the teachings of Levin in order to provide increased flexibility in the assignment of large numbers of events to nodes and users to effect remote/mobile communications.

Regarding claims 14, 18, 20 and 21 Trugman discloses that receiving at a local system a first command line that identifies a remote system (column 6, lines 41-44); causing a session to be created between the local system and the remote system, the session including a connection to a remote process resident on the remote system (column 5, lines 6-15; column 4, lines 60-63); issuing a remote command to the environment variable to cause the remote command to be executed in the remote process (column 6, lines 19-33). In addition, Trugman discloses that a session manager configured to create and maintain sessions between a local system and one or more remote systems (abstract), each session being capable of hosting a plurality of connections between the local system and remote systems (Fig. 1 and 2); issuing a session to be created further comprises distributing the task of launching the connection to a computing device other than the local system (Abstract, column 3, lines 28-41; Fig. 3 and 4, column 2, lines 27-39, Fig. 8).

Trugman fails to disclose storing results of the remote command in an environment variable associated with the session, an aggregator configured to receive results of remote execution of a command, the results being each associated with a

remote system, the aggregator being further configured to aggregate the results into an array; and a throttler configured to, upon request, limit a number of active connections within each session.

Levin discloses that storing results of the remote command in an environment variable associated with the session (Fig. 2), an aggregator configured to receive results of remote execution of a command, the results being each associated with a remote system, the aggregator being further configured to aggregate the results into an array (Fig. 7, [0154], [0293], [0531]); and a throttler configured to, upon request, limit a number of active connections within each session ([0367], [0580]).

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to modify the teachings of Trugman with the teachings of Levin in order to provide increased flexibility in the assignment of large numbers of events to nodes and users to effect remote/mobile communications.

Trugman and Levin fail to disclose that assigning each session to an environment variable configured such that a plurality of commands can concurrently use the session by referring to the environment variable.

Pazandak discloses assigning each session to an environment variable configured such that a plurality of commands can concurrently use the session by referring to the environment variable (column 5, lines 1-25 i.e., This distribution enables predictive parsing, as well as translation and ~~execution concurrents~~ and in real time, supporting pluralities of ~~users~~ ~~simultaneous~~ specify ~~multiple commands concurrently~~ of devices and applications, including over a network or other distributed computing environment. The embodiments are operable, for example, on the Internet and World Wide Web network. Additionally, embodiments are operable in local area networks and even on a single computer or device.

It would have been obvious to a person of ordinary skill in the art at the time of invention was made to modify the teachings of Trugman with the teachings of

Pazandak for use effectively in present computing environments, in which scalability, multi-user capability, wide area and remote geographic networking, and reduced or "thin client" hardware and software is desired.

Regarding claims 16, 17, 19 and 26-32, Trugman discloses,

16. The computer-executable method recited in claim 14, wherein causing the session to be created comprises creating the environment variable and making the variable available to other tasks (column 3, lines 28-41, Fig. 3, 4 and 8).

17. The computer-executable method recited in claim 16, wherein the first command line further comprises a parameter that identifies the environment variable associated with the session (Fig. 7, column 10, lines 14-40).

19. The computer-executable method recited in claim 14, wherein the command line further identifies credentials for use in creating the session between the local system and the remote system (Fig. 2; column 7, lines 1-18).

26. The computer-readable medium recited in claim 25, wherein the other performance-based mechanisms comprise a Quality Of Service mechanism (column 4, lines 29-57).

27. The computer-readable medium recited in claim 25, wherein the other performance-based mechanisms comprises an agent on a remote system that is configured to regulate an impact on resources on the remote system (column 7, lines 1-18).

28. The computer-readable medium recited in claim 21, further comprising a core engine configured to manage a flow of information among each of the several components (Fig. 5 and 6).

29. The computer-readable medium recited in claim 28, wherein the core engine is further configured to delegate a task of initiating a session to another system in a hierarchy of remote systems (Abstract and Fig. 2).

30. The computer-readable medium recited in claim 21, wherein the remote system comprises a remote agent configured to return information to the local system wherein the information comprises at least one of a result of the execution, meta information, and information about the remote system from which the result originated (Fig. 2, element 116a-e; Fig. 2, Fig. 4 and 8).

31. The computer-readable medium recited in claim 21, wherein the remote

system comprises an alternate process (column 6, lines 19-32; column 7, lines 12-18).

32. The computer-readable medium recited in claim 21, wherein the remote system comprises an alternate application domain (column 7, lines 12-18).

Regarding claims 15 and 22-25, Levin discloses,

15. The computer-executable method recited in claim 14, further comprising issuing a second remote command to the environment variable to cause the second remote command to be concurrently executed in the remote process and storing results of the second remote command in the environment variable ([206], [209]).

22. The computer-readable medium of claim 21, wherein each of the results in the array is associated with the remote system on which the results originated (Fig. 6).

23. The computer-readable medium of claim 21, wherein the aggregator is further configured to make the results available in a disaggregated fashion (Fig. 45).

24. The computer-readable medium recited in claim 21, wherein the aggregator is further configured to aggregate the results into an environment variable associated with a session created by the session manager (Fig. 7).

25. The computer-readable medium recited in claim 21, wherein the throttler is further configured to interact with other performance-based mechanisms to regulate a performance impact of a remote command execution [580].

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kideba Bahta whose telephone number is 571-272-3737.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Rodriguez can be reached on 571-272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAG system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Kidest Bahta/

Primary Examiner, Art Unit 2125